



## DEPARTMENT OF CONSUMER AFFAIRS FACT SHEET

# *Advertising*

**FEBRUARY 1998**

Advertising plays an important economic role in California's competitive marketplace. Truthful, accurate advertisements help consumers make informed choices among suppliers of goods and services. Businesses also benefit when information about their goods and services, as well as competitors' goods and services, is fairly and accurately presented to the public.

Major advertising violations of specific sections (§) of the Business and Professions Code (B&P) or the Civil Code (CC) are listed below.

**False and misleading advertisements**—An advertisement that is false or misleading is prohibited in California. An advertisement that fails to disclose information or that is ambiguous or is partially, or even literally, true may be found unlawful if the public is likely to be deceived by it. (*B&P Code § 17500*)

**Bait and switch**—The law prohibits merchants from advertising goods or services with the intent not to sell them as advertised, but to switch the customer to another item, usually at a higher price or on terms more advantageous to the seller. Bait and switch tactics take many forms. Examples include using a picture that misrepresents the advertised item, disparaging the advertised item, or showing an item that is not suited for the purposes represented in the ad. (*CC § 1770(a)(9)*)

**Supply of advertised item**—Each of the advertiser's stores in the area where an ad is run must have enough of the advertised item available at or below advertised prices to meet a reasonably expected demand. An exception is when the ad states a limit on the quantity of a certain item or a limit on the stores at which the item is available. (*CC § 1770(a)(10)*)

**Limiting the quantity sold**—Unless the ad mentions a limit on the quantity of the item that will be sold to a single customer, a merchant cannot refuse to sell advertised items to customers in any quantity that the merchant has in stock. (This law excludes sales to those who intend to resell the item.) (*B&P Code § 17500.5*)

**Disclosure of price**—If a store advertises a price for a consumer good or service that is sold only in groups of two or more, the ad must indicate the minimum number of items the customer must buy to receive them at the advertised price. For example, an ad cannot say "batteries - \$.10 each," if the batteries are sold only in packages of 10. However, the ad could say "batteries - \$.10 each, sold only in packages of 10 for \$1.00 per package." (*B&P Code § 17504*)

**Advertisement of similar items**—An advertisement for two or more goods or services of the same type (such as two models of coffee makers) must clearly identify which particular good or service is being offered at the advertised price. (*B&P Code § 17507*)

**Advertising claims**—Advertisers must be able to prove advertising claims that are supposedly based on facts, or claims that compare the product's effectiveness or safety with that of other brands or products. For example, if a car dealer claims to have the lowest prices in town, he or she must be able to support the claim. However, a more general "puff" statement, such as "low, low prices," does not have to be proven. (*B&P Code § 17508*)

**Disclosure of other items that must also be purchased**—If an advertisement for one product or service requires, as a condition of sale or lease, the purchase or lease of a different product or service, the ad must disclose the price of all of the products or services that must be purchased or leased. (*B&P Code § 17509*)

**Rain checks**—Merchants are not required to give rain checks, although some stores do have a policy of providing them. However, giving the consumer a rain check will not ordinarily excuse an advertiser's failure to have enough of an item available to meet reasonably expected demand, as explained immediately above. (*CC § 1770(a)(10)*)

**Unassembled children's toys**—If a children's toy is sold unassembled, the outside of the package must clearly state that the product is unassembled. If the toy is packaged outside of California, the wholesaler or other person who first controls the toy in California must mark the outside of the package to indicate that the toy is unassembled. (*B&P Code § 17531.1*)

**Misleading pictures**—An advertisement is misleading if the item that is being sold is not as it is pictured in the ad. (*B&P Code § 17500*)

**Literally true but misleading ads**—An ad that is literally true but misleading is unlawful. For example, if an advertisement says that an item is "Available through Sunday at only \$5.99," and the article can be purchased from the advertiser after Sunday at \$5.99, the ad is misleading, even though it is literally true. (*B&P Code § 17500*)

**Environmental advertising**—It is unlawful for any person to make any untrue, deceptive, or misleading environmental advertising claim. For example, if an advertiser claims that a product is biodegradable or compostable, the advertiser must maintain written information that shows that the environmental claims are valid. The same is true for claims that a product is "ecologically friendly," "earth friendly," or the like. The advertiser must give this information to any consumer who requests it. (*B&P Code §§ 17580, 17580.5, 17581*)

**Advertisement of used, defective, or irregular items**—If an advertised item is used, defective, or irregular, this information must be conspicuously disclosed in the ad. (*B&P Code § 17531*)

**Products labeled "Made in U.S.A."**—It is unlawful for any person to label any merchandise "Made in the U.S.A.," "Made in America," or "U.S.A." if the merchandise or any part of it has been entirely or substantially produced outside the United States. (*B&P Code § 17533.7*)

**Disclosure of legal name and street address**—Generally, a business that uses a post office box, mail drop, or telephone answering service to advertise the sale of consumer goods or services must include in the advertisement its legal name and the complete street address where the business is actually operated. (*B&P Code § 17538.5*)

**Advertising of "former" and "sale price"**—It is unlawful for an advertiser to advertise a price as a "former" price, if the price was not the prevailing market price in the locality where the advertisement is published for the three-month period before the advertisement was printed or broadcast. Alternatively, the advertisement must clearly and conspicuously state the date when the "former" price prevailed. If sufficiently large quantities of a product have not been sold at the price listed as "former" in an advertisement, it may be misleading for an advertiser to advertise the former price in comparison to the "sale" price. (*B&P Code § 17501*)

## Where To Go For Help

- If you have a complaint about the advertising practices of a business, call your local district attorney's office (look in the white pages of the phone book under *County Government*); or
- Write a letter of complaint to: California Department of Justice, Office of the Attorney General, Public Inquiry Unit, 1300 I Street, P.O. Box 944255, Sacramento, CA 94244-2550 or call (916) 322-3360 in the Sacramento area, or toll free (800) 952-5225.
- Call the California Department of Consumer Affairs, Consumer Information Center at (916) 445-1254 or (916) 322-1700 (TDD) in the Sacramento area, or toll free (800) 952-5210 / (800) 326-2297 (TDD).

## Consumer Publications

To request a list of consumer publications:

- Write: DCA Publications Office, 1625 N. Market Blvd., Ste. N-112, Sacramento CA 95834; or
- Call: DCA Publications Office at (916) 574-7378 in the Sacramento area, or toll free (866) 574-7378.

Visit the Department of Consumer Affairs website at [www.dca.ca.gov](http://www.dca.ca.gov) for more consumer information.

### Notice:

The opinions expressed in this publication are those of the authors and should not be construed as representing the opinions or policy of any agency of the State of California. While this publication is written to provide accurate general information about the law, the reader should consult an attorney or consumer expert in particular cases.